

**BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA**

HEARING #16-11554 OCTOBER 12, 2016 10:30 A.M.

DOCKET NO. 2016-223-E:

SOUTH CAROLINA ELECTRIC & GAS COMPANY – Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina

**TRANSCRIPT OF TESTIMONY
AND PROCEEDINGS**

VOLUME 3 OF 4

HEARING BEFORE: Swain E. WHITFIELD, CHAIRMAN; Comer H. ‘Randy’ RANDALL, VICE CHAIRMAN; and COMMISSIONERS John E. ‘Butch’ HOWARD, Elliott F. ELAM, Jr., Elizabeth B. ‘Lib’ FLEMING, Nikiya M. ‘Nikki’ HALL, and G. O’Neal HAMILTON

ADVISOR TO COMMISSION: F. David Butler, Esq.
Senior Counsel

STAFF: Joseph Melchers, General Counsel; James Spearman, Ph.D., Executive Assistant to Commissioners; Philip Riley, Doug Pratt, Lynn Ballentine, and Tom Ellison, Advisory Staff; Jo Elizabeth M. Wheat, CVR-CM/M-GNSC, Court Reporter; and William O. Richardson, Deborah Easterling, and Calvin Woods, Hearing Room Assistants

APPEARANCES :

*K. CHAD BURGESS, ESQUIRE, MATTHEW W.
GISSENDANNER, ESQUIRE, MITCHELL WILLOUGHBY,
ESQUIRE, and BELTON T. ZEIGLER, ESQUIRE,
representing SOUTH CAROLINA ELECTRIC & GAS COMPANY,
PETITIONER*

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

101 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210

Post Office Box 11649
COLUMBIA, SC 29211

WWW.PSC.SC.GOV

APPEARANCES (Cont'g) :

SCOTT ELLIOTT, ESQUIRE, representing SOUTH CAROLINA ENERGY USERS COMMITTEE, INTERVENOR

ROBERT GUILD, ESQUIRE, representing SIERRA CLUB, INTERVENOR

FRANK R. ELLERBE, III, ESQUIRE, and ***JOHN H. TIENCKEN, JR., ESQUIRE***, representing CENTRAL ELECTRIC POWER COOPERATIVE and THE ELECTRIC COOPERATIVES OF SOUTH CAROLINA, INTERVENORS

J. BLANDING HOLMAN, IV, ESQUIRE, and ***GUDRUN THOMPSON, ESQUIRE***, representing SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, INTERVENOR

SANDRA WRIGHT, appearing *pro se*, INTERVENOR

JEFFREY M. NELSON, ESQUIRE, and ***SHANNON BOWYER HUDSON, ESQUIRE***, representing the SOUTH CAROLINA OFFICE OF REGULATORY STAFF

1 problem with it?

2 [No response]

3 Okay. Mr. Nelson, please bring Ms. Powell up
4 at this time.

5 **MR. NELSON:** Thank you, Mr. Chairman. ORS
6 would call Ms. Allyn Powell as its first witness.

7 **CHAIRMAN WHITFIELD:** Mr. Nelson, one second,
8 please.

9 [Brief pause]

10 Mr. Nelson, once she's sworn, we're going to
11 let her do her summary and probably take a break
12 maybe after that, depending on how we're going
13 here, okay?

14 **MR. NELSON:** Yes, sir.

15 [Witness affirmed]

16 THEREUPON came,

17 **A L L Y N H . P O W E L L ,**

18 called as a witness on behalf of the South Carolina Office of
19 Regulatory Staff, who, having been first duly affirmed, was
20 examined and testified as follows:

21 **DIRECT EXAMINATION**

22 **BY MR. NELSON:**

23 **Q** Ms. Powell, if you'd please state your full name and
24 occupation?

25 **A** My name is Allyn Hunter Powell. I'm a program manager

1 at the Office of Regulatory Staff.

2 **Q** And are you the same Allyn Powell who prefiled 20 pages
3 of settlement-and-direct testimony and two exhibits in
4 this docket on September 1, 2016?

5 **A** Yes, I am.

6 **Q** Do you have any edits or corrections to your prefiled
7 settlement-and-direct testimony?

8 **A** I do not.

9 **MR. NELSON:** Mr. Chairman, ORS would offer the
10 prefiled settlement-and-direct testimony of Allyn
11 Powell to be read into the record as if given
12 orally from the stand.

13 **CHAIRMAN WHITFIELD:** Ms. Powell's prefiled and
14 settlement testimony will be entered into the
15 record as if given orally from the stand.

16 [See pgs 716-736]

17 **MR. NELSON:** Thank you, Mr. Chairman.

18 **BY MR. NELSON:**

19 **Q** Ms. Powell, the two exhibits you prepared to your
20 settlement-and-direct testimony, they're labeled AHP-1
21 and AHP-2; is that correct?

22 **A** Yes, they are.

23 **Q** Do you have any changes or corrections to those
24 exhibits?

25 **A** I do not.

1 **MR. NELSON:** Mr. Chairman, ORS would offer the
2 Exhibits AHP-1 and AHP-2, which were attached to
3 Ms. Powell's direct-and-settlement testimony, as
4 the next composite hearing exhibit.

5 **CHAIRMAN WHITFIELD:** Ms. Powell's Exhibits
6 AHP-1 and -2 will be entered in as Hearing Exhibit
7 No. 11.

8 [WHEREUPON, Hearing Exhibit No. 11 was
9 marked and received in evidence.]

10 **MR. NELSON:** Thank you, Mr. Chairman.

11 **BY MR. NELSON:**

12 **Q** Ms. Powell, did you prepare a summary of your
13 settlement-and-direct testimony?

14 **A** Yes, I have.

15 **Q** Would you please present it.

16 **A** Sure.

17 Good evening, Commissioners. My combined direct-
18 and-settlement testimony provides an overview of ORS's
19 findings, the settlement agreement, and how the
20 settlement agreement addresses the issues raised by ORS
21 in our review of the Petition.

22 First, I provide an overview of the Petition where
23 SCE&G is requesting to modify the construction schedule
24 to reflect the new substantial completion dates of
25 August 31, 2019, and August 31, 2020, for Units 2 and 3,

1 respectively. SCE&G was also requesting an increase in
2 the capital-cost estimates of approximately \$852
3 million.

4 Second, I discuss the major portions of the
5 settlement agreement, which include three key benefits:
6 the guarantee, which is contained in paragraph 12 of the
7 settlement agreement – as part of the guarantee, SCE&G
8 agrees to fix the cost to ratepayers for scopes of work
9 covered by the option – the moratorium, which is covered
10 in paragraph 13 of the settlement agreement, and the ROE
11 reduction, which is covered in paragraph 18 of the
12 settlement agreement; the election of the option and
13 agreement regarding increases to the capital-cost
14 schedules totaling \$831.3 million, the construction
15 schedule, and several other provisions relating to
16 reporting and how transfers of scopes of work are
17 treated under the guarantee.

18 Third, I discuss the October 27, 2015, EPC
19 amendment and the option, and explain what costs are
20 moved to a fixed category by the option.

21 Fourth, I discuss ORS's analysis of the Petition
22 and how the settlement agreement addresses the issues
23 raised by ORS in our review of the Petition.

24 Last, I discuss ORS's ongoing monitoring of the
25 approved schedule and the approved budget.

1 This concludes my summary.

2 **MR. NELSON:** Thank you, Ms. Powell.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23 [PURSUANT TO PREVIOUS INSTRUCTION, THE
24 PREFILED SETTLEMENT-AND-DIRECT TESTIMONY OF
25 ALLYN H. POWELL FOLLOWS AT PGS 716-736]

**THE OFFICE OF REGULATORY STAFF
SETTLEMENT AND DIRECT TESTIMONY
& EXHIBITS**

OF

ALLYN H. POWELL

SEPTEMBER 1, 2016



DOCKET NO.2016-223-E

**Petition of South Carolina Electric & Gas Company for
Updates and Revisions to Schedules Related to the
Construction of a Nuclear Base Load Generation
Facility at Jenkinsville, South Carolina**

SETTLEMENT AND DIRECT TESTIMONY OF**ALLYN H. POWELL****ON BEHALF OF****THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF****DOCKET NO. 2016-223-E**

**IN RE: PETITION OF SOUTH CAROLINA ELECTRIC & GAS COMPANY
FOR UPDATES AND REVISIONS TO SCHEDULES RELATED TO THE
CONSTRUCTION OF A NUCLEAR BASE LOAD GENERATION FACILITY
AT JENKINSVILLE, SOUTH CAROLINA**

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Allyn Powell. My Business Address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina as the Manager of Nuclear Programs in the Energy Policy Division of the South Carolina Office of Regulatory Staff ("ORS").

Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

A. I hold a Bachelor's Degree in Physics from the University of South Carolina and a Master's Degree in Physics from the College of William and Mary. My research focus while at the College of William and Mary was experimental nuclear and particle physics, and I am credited as co-author on several professional publications resulting from my research. I was previously employed as Director of State Budgeting and Finance with the Ways and Means Committee of the South Carolina House of Representatives ("WMC"). I joined WMC in 2002 as a Research Analyst, focusing on sales tax, income tax, higher education and cultural issues. I was responsible for providing background research, summarizing legislation before WMC and drafting portions of the Appropriations Act.

1 Throughout my career at WMC I served as lead staff for a variety of issue areas, including
2 K-12 education, property tax, and budget policy. I was promoted to Director of State
3 Budgeting and Finance in 2007. As Director of State Budgeting and Finance, I was
4 responsible for overseeing the State budget process for WMC and the production of the
5 Appropriations Act. In 2009, I joined the South Carolina Energy Office at the South
6 Carolina Budget and Control Board as a Program Manager. There, I worked with issues
7 relating to radioactive waste disposal and energy assurance planning. I also served as lead
8 staff for the South Carolina Governor's Nuclear Advisory Council. In 2011, I joined ORS
9 as an Associate Program Manager. As Associate Program Manager my responsibilities
10 included reviewing Base Load Review Act plant applications, managing efforts relating to
11 energy assurance planning and serving as ORS's lead contact for demand side management
12 and energy efficiency programs. In 2013, I left ORS to take a position as the Capital
13 Budgeting Manager for the State of South Carolina in the State Budget Office. In that role
14 I was responsible for reviewing applications by state agencies to establish and modify
15 construction projects, approving projects under a certain threshold and summarizing larger
16 projects for approval by members of the Joint Bond Review Committee and the Budget
17 and Control Board. I also testified as requested before both bodies and was responsible for
18 producing monthly reports regarding capital project budget and expenditures. In 2015, I
19 returned to ORS as the Manager of Nuclear Programs. My duties at ORS include managing
20 the review of Base Load Review Act applications as well as managing the Radioactive
21 Waste Disposal Program, which provides oversight for South Carolina's low level
22 radioactive waste disposal facility located in Barnwell, SC.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA (“COMMISSION”)?

A. Yes. I have provided written and oral testimony with regard to the construction of the nuclear base load facility at Jenkinsville, SC (the “Project” or “Units”) by South Carolina Electric & Gas Company (the “Company” or “SCE&G”).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to provide an overview of ORS’s findings regarding SCE&G’s Petition for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, SC (“Petition”) and to discuss the Settlement Agreement (the “Settlement” or “SA”) dated August __, 2016 that was entered into between ORS, SCE&G, Frank Knapp, the South Carolina Energy Users Committee, Central Electric Power Cooperative, Inc., and the Electric Cooperatives of South Carolina, Inc. (the “Settling Parties”).

Q. WHAT IS THE COMPANY REQUESTING IN THIS PROCEEDING?

A. Under S.C. Code Ann. Section 58-33-270(E) (2015) of the Base Load Review Act (“BLRA”), SCE&G is requesting the Commission to modify the construction schedules and accompanying BLRA milestones to reflect new guaranteed substantial completion dates (“GSCDs”) of August 31, 2019 and August 31, 2020 for Unit 2 and Unit 3, respectively. SCE&G is also requesting an increase to the capital cost estimates of approximately \$852 million. This was reduced to approximately \$846 million in SCE&G’s testimony (Exhibit AHP-1). The largest portion of the increase is \$781.1 million in Engineering, Procurement and Construction Contract (“EPC Contract”) cost increases, comprised of \$137.5 million in costs resulting from an amendment to the EPC Contract

executed on October 27, 2015 (“Amendment” or “EPC Amendment”), \$505.5 million in costs resulting from SCE&G’s decision to exercise an option in the EPC Amendment that moves many of the EPC Contract costs to a fixed category (“Option”), \$85.5 million resulting from a reversal of the credit for liquidated damages that SCE&G previously credited to its customers via Order No. 2015-661, and \$52.5 million in increases due to Change Orders. As part of this proceeding SCE&G is also asking for approval of its decision to exercise the Option. The remaining cost increases are due to Owners Costs (\$20.8 million), Escalation (\$2.3 million) and an allowance for funds used during construction (“AFUDC”) (\$42.4 million).

Q. PLEASE DESCRIBE ORS’S ACTIVITIES IN RESPONSE TO SCE&G’S PETITION.

A. ORS has been actively reviewing documentation related to the Amendment since October 2015, and much of the information in the Petition was covered by several rounds of continuing information requests related to that review. ORS asked the Company to update its responses to these requests in light of the Petition. In addition, ORS met frequently with representatives from SCE&G’s construction, business and finance departments to discuss the details of the Petition and the supporting documentation. ORS also interviewed several SCE&G, Westinghouse Electric Company (“Westinghouse”) technical experts and Fluor Corporation (“Fluor”) technical experts to fully understand the various components of the Petition.

Q. PLEASE BRIEFLY DESCRIBE THE SETTLEMENT AGREEMENT.

A. In the Settlement, the Settling Parties negotiated the following key benefits for ratepayers:

1. An agreement by SCE&G to guarantee (the “Guarantee”) that the scopes of work covered by the Option remain fixed (SA paragraph #12). As part of the Guarantee, SCE&G agrees to fix costs to ratepayers for scopes of work covered by the Option by not seeking any future increases for these scopes of work in the cost schedules for the Units and by not seeking revised rates for such increases.
2. A moratorium (the “Moratorium”) on additional filings to increase cost schedules prior to January 28, 2019 with this date being extended day-for-day with any delay in the commercial operation date of Unit 2 (SA paragraph #13).
3. An agreement by SCE&G to reduce the return on equity (the “ROE Reduction”) rate used to compute revised rates filings after January 1, 2017 from 10.5% to 10.25% (SA paragraph #18).
4. A provision capping at \$20 million the amount SCE&G can recover for the items listed in Schedule C of the Amendment (excluding Plant Layout Security, Phase 3 and Plant Security Systems Integration which are otherwise addressed in the Settlement) that were in dispute with Westinghouse at the time of the Amendment but were not resolved through the Amendment (*i.e.*, the “Schedule C” items) (SA paragraph #12).
5. A requirement that all future requests to increase cost schedules due to Change Orders shall require a signed Change Order to be presented at the time of the request and disallowing future requests based on informal estimates of Change Order costs (SA paragraph #12).
6. Enhanced mandatory public reporting of schedule information, productivity and production metrics for construction, and issues related to the EPC Contract and the

Project going forward (SA paragraph #10).

In the context of these benefits, the Settling Parties agreed to the following:

7. An increase to the BLRA approved cost schedules to reflect the cost of the Amendment (\$137.5 million) and the cost of the Option (\$505.54 million) and approval of SCE&G's decision to exercise the Option (SA paragraph #5).
8. A finding that SCE&G had justified Change Orders totaling \$32.58 million (SA paragraph #6).
9. An agreement to allow a transfer of scope for the Service Building from the EPC Contract to Owner's Costs for completion of the building under a separate fixed price contract with a commercial contractor other than Westinghouse, and a reduction to the Fixed Price category of \$11.92 million, which includes the \$6.9 million requested in the Petition for the Service Building, 3rd Floor and the \$5.02 million already in the Fixed Price for the Service Building, 1st and 2nd Floors, and a corresponding increase in the Owner's Cost for the Service Building of \$9.2 million plus \$1.3 million for escalation, in exchange for SCE&G's agreement to cap the total cost of this building to ratepayers at the revised amount of \$10.48 million (which includes escalation) (SA paragraph #6).
10. Approval of the revised GSCDs for the Units of August 31, 2019 and August 31, 2020 and simplification of the milestone schedule in light of the Moratorium and the fact that Fluor and Westinghouse are preparing a revised resource-loaded integrated project schedule which may revise and re-sequence the construction schedule (SA paragraph #10).
11. Enhanced mandatory public reporting of schedule information, productivity and

1 production metrics for construction, and issues related to the EPC Contract and the
2 Project going forward. (SA paragraph #10).

3 12. In addition to the Owner's Cost associated with the transfer of the Service Building,
4 approval of an increase in Owner's Cost of \$20.83 million largely associated with
5 the delay in the GSCDs and the restructuring of the EPC Contract under the
6 Amendment (SA paragraph #7).

7 ORS supports this Settlement as reasonable because it commits SCE&G to ensuring
8 that the terms of the Option are enforced, limits SCE&G's ability to seek costs outside of
9 the Option until Unit 2 is nearing completion and caps a number of important cost items.

10 **Q. WHAT COMPONENTS OF THE SETTLEMENT AGREEMENT ARE MOST**
11 **IMPORTANT TO ORS?**

12 **A.** The Guarantee, Moratorium and the ROE Reduction.

13 **Q. PLEASE BRIEFLY DESCRIBE THE AMENDMENT.**

14 **A.** On October 27, 2015, SCE&G signed the Amendment, which modified the EPC
15 Contract in several key ways. It released Chicago Bridge and Iron ("CB&I") from its
16 obligations as a member of the Consortium, leaving Westinghouse as the sole EPC
17 Contract holder via its purchase of the Stone and Webster subsidiary from CB&I.
18 Westinghouse later employed Fluor as a subcontracted construction manager to handle
19 craft labor and day to day activities. It also moved the GSCD of Unit 2 from June 19, 2019
20 to August 31, 2019 and the GSCD of Unit 3 from June 16, 2020 to August 31, 2020. It
21 resolved a number of outstanding disputes regarding whether some items were included in
22 the scope of the EPC Contract, resolved outstanding disputes regarding invoices, and
23 included more specific wording regarding the provision in the EPC Contract related to

changes in law. It also included an Option to move a large portion of the EPC Contract costs to a fixed cost category. The ability to exercise this Option is contingent on approval by the Commission and Santee Cooper.

Q. DOES THE OPTION MAKE THE EPC CONTRACT AN ENTIRELY FIXED PRICE CONTRACT?

A. No. The Option specifically excludes some items such as sales tax and insurance, as well as force majeure events. Exhibit C of the Amendment also includes a list of items not fully resolved by the Amendment. Some of these items are included in this Petition as Change Orders. While it does move many of the EPC Contract costs to a fixed price category, this fixed price is still subject to change via further EPC Contract amendments or Change Orders. It also does not prevent SCE&G from voluntarily removing items from the fixed price scope to the Owners Cost scope via a Change Order. However, in the Settlement, ORS insisted that such transfers not be recognized unless the work could be done as an Owner-directed item for a price fixed by SCE&G at an amount that is less than or equal to the amount that was formerly included in the fixed price scope. Therefore, under the terms of the Settlement, transfers may not result in any increase in the ultimate cost for SCE&G's ratepayers.

Q. HOW IS THIS AMENDMENT DIFFERENT FROM PREVIOUS EPC CONTRACT AMENDMENTS?

A. Previous EPC Contract amendments were executed to incorporate Change Orders, revise GSCDs or clarify wording in the EPC Contract on one or two issues. These amendments had substantial calculations and backup documentation. The Amendment is different in that it served as a comprehensive settlement that substantially changed the EPC

1 contract by removing a member of the Consortium, settling outstanding disputes,
2 substantially revising the bonus and liquidated damages provisions and modifying the
3 GSCDs. While SCE&G does have documentation behind the potential cost of some of the
4 items resolved in the dispute, in most cases these costs are not well supported and are not
5 auditable. The revised contract amounts to a renegotiation of the price of the Units. This
6 Amendment also included the Option, which changes the structure of much of the EPC
7 Contract going forward by moving many costs to a fixed category. This capped the amount
8 that Westinghouse can charge to complete the work within the scope of the Option at
9 \$3.345 billion. The Option includes within it a premium charged by Westinghouse for
10 fixing these costs. While it is possible to calculate this number using the price from the
11 Option for the remaining work, this remains a premium that is primarily associated with
12 risk and is not supported by specific construction estimates.

13 **Q. PLEASE SUMMARIZE ORS'S ANALYSIS OF THE PETITION?**

14 **A.** ORS has concerns regarding both costs and construction schedules outlined in the
15 Petition.

16 **Schedule**

17 While Westinghouse has indicated to ORS it has confidence in the logic behind the
18 activities within the schedule, it has also indicated that they do not have Fluor's full input
19 on the resources needed to complete these activities. Westinghouse has further indicated
20 that the current construction schedule cannot be met without substantial improvement in
21 current production and productivity rates. The current schedule requires the simultaneous
22 use of numerous mitigation strategies, which are worked outside of the main schedule and
23 increase ORS's concern regarding the uncertainty in the schedule. Meeting the current

1 construction schedule will require substantial improvements in both productivity and
2 production. Throughout the course of this project, Westinghouse and its Consortium
3 partner have presented aggressive schedules along with plans to make improvements to
4 meet those schedules. Thus far, they have not been successful. ORS has seen positive
5 changes recently, but with Fluor's fully resource-loaded construction schedule still
6 outstanding a great deal of uncertainty remains. While ORS believes the sequence of
7 construction activities to be valid, ORS has concerns these activities may take longer than
8 previously estimated. There is only so much time that can be made up by increased
9 staffing, especially due to the small spaces in which some of the work must take place. The
10 GSCDs in the Petition accurately reflect the GSCDs in the Amendment, that is GSCDs of
11 August 31 2019 for Unit 2 and August 31, 2020 for Unit 3. ORS believes that it will take
12 at least this long to complete the Units, and in fact it is likely to take longer. At this time,
13 ORS is still of the opinion that the Units can be completed within the 18 month window
14 from the GSCDs allowed under Order No. 2009-104(A). However, even a relatively small
15 delay in Unit 3 would jeopardize the ability of SCE&G to obtain the production tax credits
16 for that Unit. ORS does not object to the approval of revised BLRA milestone schedule
17 and GSCDs, as ORS believes it will take at least this long to complete the Units, but ORS
18 is concerned regarding the level of uncertainty in the schedule at this time. This uncertainty
19 regarding the schedule has also impacted other areas of ORS's analysis. It is difficult to
20 properly evaluate items such as Owner's Costs, Escalation and to a certain extent Change
21 Orders - some of whose costs are dependent on durations and need dates- without an
22 adequate understanding of the schedule to back these up.

23 **Amendment**

As to the \$137.5 million requested for the Amendment, ORS has only found documentation to support approximately \$64.6 million of the \$224.4 million in value that SCE&G assigned to the Amendment. While ORS recognizes that the Amendment resolved a number of commercial disputes, both directly between SCE&G and the Consortium and by releasing a Consortium partner and thus reducing disputes within the Consortium, it is difficult to assign a valuation to this resolution. The Amendment also included changes to both the bonus and liquidated damages provisions in the EPC Contract, with which ORS has concerns. The Amendment served as a comprehensive settlement and ORS has not found adequate documentation to support the value of this settlement.

Option

Closely related to this is the issue of the \$505.54 million cost for the Option. While ORS believes, based on SCE&G's sensitivity study, that the Option on its surface represents a good value given current production and productivity trends, the determination of the Option's true value is based entirely on an analysis of Westinghouse's willingness to abide by the terms of the contract and SCE&G's willingness to hold Westinghouse to those terms. Moving many of the costs to a fixed price category does simplify many areas where there were previously disputes. However, it also provides the opportunity for new disputes. The new fixed price Change Orders requests being provided by Westinghouse have been accompanied by a lower level of documentation, and changes to buildings or other items within the scope of the fixed price have proved so problematic that SCE&G has, in at least two cases, begun pulling these out of Westinghouse's scope and into the Owner's Cost. Based on previous experience with this contract and SCE&G's sensitivity study, which at current production and productivity trends shows substantial potential

1 losses to Westinghouse, ORS is concerned that the Option will not truly fix this portion of
2 the cost of the Units. For this reason, in the Settlement ORS insisted that SCE&G agree to
3 stand behind the “fixed price” and provide a guarantee that no additional ratepayer dollars
4 will be requested for items in the scope of the “fixed price” in the Option. The Settlement
5 further protects ratepayers by placing caps on other items of particular concern, such as
6 many items associated with Exhibit C which were not resolved as part of the Option.
7 Absent these additional guarantees, ORS would be concerned that the ratepayers were not
8 adequately protected by the Option.

9 **Liquidated Damages**

10 As to the \$85.53 million in liquidated damages that were previously credited to
11 ratepayers, ORS agrees that the Amendment does move the time frame for collecting these
12 damages out into the future and as such they are properly added back to the budget of the
13 Project.

14 **Owner’s Costs**

15 The \$20.83 million in Owner’s Costs are well documented and track appropriately
16 with the current schedule and budget. As with all areas related to the construction schedule,
17 ORS has concerns that the time frames underlying this estimate are not yet mature and have
18 a high degree of uncertainty. However, as ORS believes that these estimates are in fact
19 lower, ORS does not oppose the use of this estimate of Owner’s Costs, recognizing that
20 there is still uncertainty in these costs related to the schedule.

21 **Escalation and AFUDC**

22 Similarly, SCE&G’s request for \$2.3 million in Escalation and \$42.4 million in
23 AFUDC as outlined in Kevin Kochems testimony are well documented and track

1 appropriately with the current schedule and budget. ORS does not oppose the use of these
2 estimates, with the same caveats as applied to Owner's Costs. As is recognized in the
3 Settlement, escalation and AFUDC are not fixed, but vary according to the approved
4 escalation indices and AFUDC rate calculation as they change from time to time. When
5 the changes associated with the transfer of the Service Building from the Fixed Price to
6 Owners Costs are included, the total estimate supported by the Settlement for Escalation
7 and AFUDC is \$45.18 million.

8 **Transmission**

9 SCE&G removed its original request in the Petition for an additional \$4.3
10 Transmission dollars as the methodology for remedying those issues is still under review.
11 ORS agrees with SCE&G's assessment and does not recommend the inclusion of these
12 dollars.

13 **Change Orders**

14 SCE&G's Petition also included \$52.5 million in Change Orders. When evaluating
15 Change Orders, ORS expects that the documentation supporting them will include signed
16 Change Orders, signed agreements with detailed documentation that will form the basis for
17 future Change Orders, or at the very least a mature level of detailed documentation
18 supporting a Change Order that is nearly ready to be signed. When the Petition was filed,
19 such a level of documentation was only available for a few of the smaller Change Orders.
20 SCE&G has done additional research and in some cases has received additional proposals
21 from Westinghouse since that time. ORS's review of the associated documentation
22 supports the inclusion of \$32.58 million for Change Orders at this time. ORS has worked
23 with SCE&G to improve the level of documentation, and is now able to support at least a

1 portion of the costs associated with each of the Change Order requests included in the
2 Petition. In some cases, this is lower than the amount requested as the latest Westinghouse
3 estimates are below the amounts originally estimated by SCE&G in the Petition. It is the
4 position of ORS that until a Change Order has been agreed to by both parties, the costs
5 associated with it are not properly included in BLRA cost forecasts. Under the Settlement,
6 only signed Change Orders will be allowed going forward. SCE&G will be prevented from
7 presenting estimates of Change Order cost for inclusion in cost forecasts.

8 This Change Order total does not reflect increases related to the 3rd Floor of the
9 Service Building. Subsequent to filing Direct Testimony, SCE&G made a decision to
10 move the entire Service Building out of the scope of the EPC Contract and into Owner's
11 Costs. This decision was made to support the construction of the 3rd Floor, which was
12 needed to allow consolidation of certain support staff within the protected area of the site,
13 in a time frame which met SCE&G's need date for the building. ORS had concerns
14 regarding this decision, and the potential impact to ratepayers of moving this scope of work
15 out of the fixed price category. Outside of the scope of the Settlement, ORS was unable to
16 support this request. The Settlement reflects the fact that SCE&G has now decided to
17 construct the Service Building as an Owner's cost item and to do so under a fixed price
18 contract with a commercial contractor. SCE&G will transfer the associated amount from
19 the Fixed Price category to the Owner's Cost category and the amounts shall be included
20 in the BLRA-approved capital cost schedule along with any associated escalation and
21 AFUDC. Specifically for the Service Building, including the Third Floor, SCE&G agrees
22 to reduce the Fixed Price category in the amount of \$11.92 million, which includes the \$6.9
23 million requested in this Petition for the Service Building, 3rd Floor and the \$5.02 million

1 already in the Fixed Price for the Service Building, 1st and 2nd Floor, and increase the
2 Owners Cost category in the amount of \$10.48 million (which includes escalation), and to
3 not seek recovery from ratepayers in any future proceeding for any costs in excess of
4 \$10.48 million for the Service Building. After execution of the Change Order between
5 SCE&G and Westinghouse regarding the Service Building, SCE&G will provide a copy
6 of the Change Order to ORS and if necessary, SCE&G will adjust the Owners Cost
7 category consistent with the terms of the Settlement.

8 Overall, ORS found the level of documentation offered in this Petition to be lower
9 than that offered in previous petitions. ORS's review was also hampered by the lack of
10 availability of the fully resource-loaded integrated construction schedule. Time is money.
11 Schedule and budget go hand in hand, and ORS is concerned regarding the timing of this
12 Petition and its impact on the ability of ORS to properly evaluate budgets when the
13 schedule is undergoing a major adjustments.

14 **Summary of ORS Recommendations**

15 In summary, ORS's review supports the inclusion of ~~\$85.53~~ \$85.53 million for the reversal
16 of the Liquidated Damages Credit, \$32.58 million in Change Orders, \$20.83 million in
17 Owner's Costs (in addition to the Owner's cost associated with the transfer of the Service
18 Building), \$2.3 million in Escalation, and \$42.4 million in AFUDC. These increases total
19 \$183.64 million of the \$852 million requested by SCE&G in the Petition. ORS recognizes
20 that the Escalation and AFUDC amounts in this review have been revised by the
21 Settlement, and in the context of the Settlement ORS supports those increased amounts.

22 ORS's review of the \$137.5 million for the Amendment is less conclusive. ORS
23 has been able to identify approximately \$64.6 million in value associated with the

1 Amendment. While many of the changes associated with the Amendment were needed and
2 represent a positive direction for the Project, ORS is not able to support this request using
3 our normal standards of review as the \$137.5 million increase was a settlement and cannot
4 be traced back to individual disputed cost items. However, the amount requested is
5 consistent with the Amendment, which has been executed. In the context of the Settlement,
6 ORS is supportive of this amount.

7 SCE&G is also requesting that the Commission approve its decision to exercise the
8 Option. Based on SCE&G's sensitivity study and ORS's concerns regarding the Project
9 Schedule, ORS agrees that the Option could represent a good value for SCE&G and for
10 ratepayers. With respect to the \$505.54 cost for the Option, ORS is only supportive of this
11 cost in the context of the Settlement and because SCE&G has guaranteed to its ratepayers
12 that it will stand behind the Option and will not request any additional ratepayer dollars for
13 items included in the scope of the "fixed price" in the Option as set forth in the Settlement.

14 In the context of the Settlement, ORS also supports the increases and transfers
15 outlined above related to the Service Building.

16 With respect to the schedule, ORS is concerned regarding the degree of uncertainty
17 remaining regarding the schedule. The GSCDs are consistent with the Amendment, and
18 the BLRA milestone schedule is consistent with the logic within the project schedule when
19 the Amendment was filed. ORS believes that these dates are optimistic, but that the Project
20 is likely to be completed within 18 months of these dates. For this reason, ORS does not
21 oppose the revised GSCDs and BLRA milestone schedule. However, the timing of the
22 issuance of the Commission's Order and the availability of the revised schedule present
23 some challenges. As agreed in the Settlement, the Moratorium will be in place when

Westinghouse issues the new resource-loaded integrated project schedule for the Project. In recognition of that fact, the Settlement provides that the only Commission-approved BLRA milestones going forward will be the GSCDs for the two Units. This does not reduce SCE&G's reporting requirements regarding previous BLRA milestones and the Settlement imposes additional reporting requirements. The Settlement requires that SCE&G commit to immediately report the new fully resource-loaded integrated schedule when Westinghouse makes it available and that SCE&G provide updates on all milestone dates it contains in quarterly reports through the end of the Project. The Settlement also requires that SCE&G continue to provide updates on the status of any of the prior BLRA milestones and include updates on all of the construction milestones that are included in the milestone payment schedule in its quarterly reports through the end of the Project. The milestone payment schedule, when agreed to by SCE&G and Westinghouse, will represent what they believe are the key Project milestones and, as such, may provide an additional useful measure of progress for the Project. The milestone payment schedule is currently flowing through the EPC Contract's dispute resolution process. The Settlement also requires SCE&G to include data on construction and craft staffing, productivity and production in its quarterly reports.

Exhibit AHP-1 summarizes the differences between the Petition, SCE&G's Direct Testimony and the Settlement.

Q. WHAT ACTIVITIES DOES ORS PERFORM WITH RESPECT TO ITS ONGOING MONITORING OF THE APPROVED MILESTONE CONSTRUCTION SCHEDULE?

A. The Company's required quarterly reports provide a status of the approved BLRA milestone schedule. The BLRA milestone schedule consists of 146 milestone activities. ORS verifies the status of each milestone activity to ensure the activity is in accordance with previous Commission orders relating to this matter, Order Nos. 2009-104(A), 2010-12, 2011-345, 2012-884, and 2015-661. It should be noted that milestone activities are allowed by Commission order to be accelerated by up to 24 months or delayed by up to 18 months.

Q. WHAT OVERSIGHT ACTIVITIES DOES ORS PERFORM WITH RESPECT TO ITS ON-GOING MONITORING OF THE APPROVED CAPITAL COST ESTIMATES?

A. The Company's quarterly reports provide a status of the approved capital cost estimates. ORS evaluates the Company's quarterly reports with a focus on the capital cost estimates, project cash flow, AFUDC and escalation. Collectively, these focus areas determine the status of the project budget.

ORS compares the capital cost estimates approved by the Commission to the capital cost estimates in the Company's quarterly reports. This comparison focuses on the major cost categories, which are:

- Fixed with No Adjustment
- Firm with Fixed Adjustment A
- Firm with Fixed Adjustment B
- Firm with Indexed Adjustment
- Actual Craft Wages
- Non-Labor Cost
- Time & Materials
- Owners Costs

• Transmission Projects

ORS evaluates cost variances which may be due to various project changes (e.g., shifts in work scopes, payment timetables, construction schedule adjustments, change orders, etc.) to determine if the cumulative amount of these changes impact the total approved capital cost of the project.

In a similar fashion, ORS compares the approved project cash flow to the project cash flow in the Company's quarterly reports. This comparison focuses on any variance to annual cash flow requirements. Lastly, AFUDC and escalation rates are evaluated to determine if appropriate rates have been applied.

Exhibit AHP-2 tracks the updates to the capital cost schedules from Commission Order No. 2009-104(A) through the Company's request in the Petition.

Q. WHAT OTHER ACTIVITIES DOES ORS PERFORM AS PART OF ITS ON-GOING MONITORING OF THE APPROVED CAPITAL COST ESTIMATES?

A. During on-site visits, the ORS staff reviews documents that may impact the project budget. Examples of such documents are contract amendments, change orders and notices from the holder of the EPC Contract, Westinghouse. The ORS staff also reviews invoices associated with completed milestone activities to ensure milestone payments are consistent with the EPC milestone payment schedules. In addition, ORS's Audit Division further evaluates the Company's actual project expenditures.

Q. WHAT OTHER ACTIVITIES DOES ORS PERFORM AS PART OF ITS ON-GOING MONITORING OF THE PROJECT?

A. ORS technical staff participate in monthly meetings with NND personnel, attend periodic meetings with Westinghouse and Fluor representatives, conduct periodic site tours

1 and attend Nuclear Regulatory Commission (“NRC”) public meetings held near the site.
2 ORS staff also review documents related to the construction on an ongoing basis. These
3 documents include, but are not limited to: daily construction activities plans, a weekly
4 construction activities report, detailed construction schedules, schedule mitigation plans,
5 milestone activity schedules, major component fabrication status log and meeting minutes.
6 Also, ORS performs on-site evaluations to physically observe construction activities to
7 ensure construction progress is consistent with NND documentation. ORS staff regularly
8 witness key project milestones, such as the setting of major structural modules, and perform
9 site visits to companies manufacturing major components. Additionally, to keep informed
10 of NRC’s most recent policies and interpretations, ORS staff have attended the NRC’s
11 annual Regulatory Information Conference in Rockville, MD. Also, ORS performs on-site
12 evaluations to physically observe construction activities to ensure construction progress is
13 consistent with NND documentation. ORS routinely participates in NRC conference call
14 meetings to monitor activities related to the project.

15 **Q. WHAT IS YOUR RECOMMENDATION?**

16 **A.** ORS recommends that the Commission approve the Settlement Agreement.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 **A.** Yes, it does.

1 **MR. NELSON:** Ms. Powell is available for
2 questions from the nonsettling parties or the
3 Commission.

4 **CHAIRMAN WHITFIELD:** Are there any questions
5 at this time, for the nonsettling parties'
6 attorneys? Mr. Holman and Ms. Thompson?

7 **MS. THOMPSON:** No, thank you, Mr. Chairman.

8 **CHAIRMAN WHITFIELD:** Mr. Guild, are you going
9 to have any questions for Ms. Powell?

10 **MR. GUILD:** Yes.

11 **CHAIRMAN WHITFIELD:** You do? How about you,
12 Ms. Wright, are you going to have any questions for
13 her?

14 **MS. WRIGHT:** I have a couple.

15 **CHAIRMAN WHITFIELD:** Okay. At this time,
16 we're going to take a brief break. We'll come back
17 with questions from the nonsettling parties for Ms.
18 Powell, and from the Commissioners. And we'll make
19 a decision after that as to how much later to go
20 tonight. So we'll take about 10 minutes right now.

21 [WHEREUPON, a recess was taken from 5:20
22 to 5:35 p.m.]

23 **CHAIRMAN WHITFIELD:** Please be seated. Okay.
24 Ms. Powell, we'll take questions from the
25 nonsettling parties.

Mr. Guild, I believe we're going to let you go
first.

CROSS EXAMINATION

BY MR. GUILD:

Q Good evening, Ms. Powell.

A Good evening.

Q Just a couple of questions for you.

A Sure.

Q So, in your settlement testimony, you identify as one of
the key attributes that attracted ORS to enter into this
agreement what you characterize as "the guarantee." And
I'm looking at page five, line two, of your settlement
testimony. And you not only call it a guarantee, it
capitalizes it: G-u-a-r-a-n-t-e-e. You see that
testimony?

A Yes, sir.

Q All right. And you say, "An agreement by SCE&G to
guarantee (the 'Guarantee') that the scopes of work
covered by the option remain fixed," and you cite
settlement agreement paragraph 12. And I have in front
of me settlement agreement paragraph 12. And would you
point to me where the word "guarantee" appears in
settlement agreement paragraph 12, please?

A The word "guarantee" does not appear in settlement
agreement paragraph 12.

1 **Q** Does it appear anywhere else in the settlement
2 agreement: "guarantee," with a big G, or a little G, or
3 any other spelling thereof?

4 **A** "Guarantee" does not appear in the settlement agreement.
5 However, this is how ORS has defined the effect of
6 settlement agreement paragraph 12.

7 **Q** Right. So "guarantee" is not a word of contract that
8 SCE&G/SCANA has entered into, nor is it a term of art
9 used at all in the settlement agreement; it's simply
10 ORS's characterization of cited paragraph 12 of the
11 proposed settlement, correct?

12 **A** It's how we have defined it.

13 **Q** It's how you've defined it, right. Did you hear
14 Chairman Marsh's testimony in this proceeding?

15 **A** I did.

16 **Q** And did you hear Chairman Marsh explain how he
17 characterized the agreement, and I think it's fair to
18 say he agreed that the word "guarantee" was not in the
19 settlement, and they weren't offering a guarantee, as he
20 saw it? You heard that?

21 **A** He did say that the word "guarantee" wasn't in the
22 settlement agreement. But a guarantee is basically an
23 assertion in writing that you will do certain things and
24 agree to certain conditions, and the settlement
25 agreement certainly does contain that. Why Mr. Marsh

1 won't use the word "guarantee," I don't know.

2 **Q** Well, I'm concerned about whether it is a guarantee, no
3 matter how you define it, aside from whether the term
4 "guarantee" is used. So, did you hear Chairman Marsh
5 say that SCE&G reserves the right to continue to accrue
6 AFUDC on costs that they did not submit to the PSC for
7 approval under the Base Load Review Act, and then to
8 include those costs in rate base at the point where the
9 Summer units actually came into service? Did you hear
10 him say that, or words to that effect?

11 **A** Yes.

12 **Q** So he's not guaranteeing not to charge ratepayers for
13 these extra costs; he's just agreeing to a moratorium on
14 when he actually tells ratepayers they're going to have
15 to pay for these costs and then submits them to the PSC
16 when the plants go in service, right?

17 **A** I would not agree with that characterization.

18 **Q** Okay. Well, he agrees not to ask for Base Load Review
19 Act approval for ratepayer financing of those costs, at
20 least through a period that he calls the moratorium, and
21 that's in there, right? There's a moratorium to –

22 **CHAIRMAN WHITFIELD:** Mr. Guild, I need you to
23 get mic'd up again.

24 **MR. GUILD:** Okay. Oh, sorry.

25 [Brief pause]

1 **BY MR. GUILD:**

2 **Q** Do I need to repeat that question?

3 **A** No, sir. I heard your question. The moratorium – there
4 is a component of the settlement agreement that is a
5 moratorium, and the guarantee covers fixing the costs
6 associated with the option. However, there are costs
7 that do fall outside of the guarantee. These are things
8 specifically related to sales tax, performance bonds,
9 insurance premiums, import duties, mandatory spare parts
10 and extended equipment warranties not otherwise agreed
11 to in the larger settlement, costs associated with the
12 decisions of the Dispute Resolution Board, and costs
13 associated with the issues listed in Exhibit C of the
14 amendment. Also, owner's costs are not included in the
15 guarantee.

16 The guarantee is only related to the costs that are
17 contained within the option, and if I can read the
18 language to you to maybe make this a little more clear –

19 **Q** If you choose, but I have the agreement in front of me,
20 so there's no need to, unless it helps you.

21 **A** I think it might help me with my response. “The
22 settling parties agree that the payment for the option
23 will not be contested, provided that SCE&G takes certain
24 steps to ensure that ratepayers retain the benefit of
25 the fixed-price. SCE&G, therefore, agrees to fix the

1 price to consumers for EPC contract costs according to
2 the terms of the settlement. To this effect, SCE&G
3 agrees that it will not file any future requests with
4 the Commission seeking additional or updated budget
5 increases related to the construction of Unit 2 and 3,
6 unless such requests are related to signed change
7 orders, transmission costs, time-and-materials costs
8 specifically outlined in paragraph two, page one, of the
9 option," relating to sales tax, performance bonds, and
10 those things that I listed earlier. "Owner's cost
11 increases will only be considered if they are related to
12 staffing costs due to delays or new costs not identified
13 at the time of this filing. Owner's cost increases
14 shall not be considered if they involve a transfer of
15 scopes of work from Westinghouse's fixed-price category,
16 unless SCE&G can complete the scope of work pursuant to
17 a contract that fixes the price in an amount equal to or
18 less than the amount of the credit provided by
19 Westinghouse and the credit change order that moves the
20 scope of work," and then it goes on to sort of deal with
21 a few other clarifications about scopes of work.

22 So there is a portion that is fixing the price for
23 the option, and there's another portion of the
24 settlement agreement that is the moratorium. These
25 things that aren't covered in the guarantee, certainly

1 SCE&G will be accruing AFUDC on those if they need to
2 come in before the moratorium would allow them to do so.

3 What ORS was very concerned about is that there's a
4 lot of uncertainty, in our minds, regarding the
5 construction schedule and how long it's going to take to
6 complete the project, how many man-hours it's going to
7 take to complete the project. We would be much more
8 comfortable if we had Fluor's input at this point, to
9 help us with that. Absent that, we wanted to do the
10 best that we could to protect ratepayers from another
11 wholesale renegotiation, just because it takes more
12 hours than Westinghouse expected, just because it takes
13 them, you know, more parts than they expected. We
14 didn't want the ratepayers to agree to the option and
15 then keep coming back. And so I think that the
16 guarantee, as outlined in paragraph 12 of the settlement
17 agreement, does represent the best job we could do, of
18 doing that, and what we could agree to.

19 **Q** Does that complete your answer?

20 **A** Yes, it does.

21 **Q** And that now clarifies what the guarantee is, as ORS
22 characterizes it.

23 **A** Yes, it does.

24 **Q** You did leave out one minor little detail, and that is
25 change of law. They reserve the right to seek

1 additional costs associated with what ultimately is
2 determined to be a change of law.

3 **A** That is correct. I think that language might be
4 somewhere else, but, yes, changes in law are not
5 included.

6 **Q** It's actually paragraph 12; you just stopped reading
7 before you got to that.

8 **A** I'm sorry.

9 **Q** All right. And change of law – you heard the testimony
10 of Mr. Byrne; that's been a subject of significant
11 contention between the contracting parties, Westinghouse
12 and the consortium, and the company, hasn't it?

13 **A** Yes, it has.

14 **Q** And they're still disputing, before the Dispute
15 Resolution Board, the issue of scheduled payments for
16 meeting certain milestones under the construction
17 schedule; that's a matter still pending, correct?

18 **A** That's not a change in law, but it is a matter that's
19 still pending.

20 **Q** Right, I mean, they're fighting already about something
21 that they didn't resolve in the contract amendment, and
22 I'm asking you whether or not you're confident that
23 there will be no further disputes about interpretation
24 of a change of law, as there have been in the past that
25 have led to significant additional costs.

1 **A** I think that the new language regarding change in law
2 does make such disputes less likely. It's never going
3 to completely eliminate disputes.

4 **Q** Okay. So what's ORS's position, Ms. Powell, if, as Dr.
5 Lynch supposes, the additional costs to complete the
6 project amount to \$800-\$900 million additional costs,
7 for which Westinghouse is committing itself to be
8 responsible, and Westinghouse/Toshiba facing financial
9 crises that extend back several years to the resignation
10 of their CEO and fines by the Japanese accounting
11 authorities, Westinghouse/Toshiba defaults and just
12 walks away from the project? What would happen to what
13 you characterize as the guarantees to protect ratepayers
14 in that event?

15 **A** If Toshiba were just to get up and walk out from the
16 project, then, I think there would be some serious
17 litigation regarding the EPC contract where SCE&G would
18 try to make some recoveries from Toshiba. I don't know
19 how much would be left of the project at that point; I
20 don't really have enough information to speculate. But
21 the guarantee fixes the price according to the option,
22 and if there is no option – we would all be in very
23 uncharted territory, and we would have to figure out
24 what we were going to do.

25 **Q** Well, you're ORS, and you're the ones looking out for

1 us. The question is what has ORS contemplated would
2 happen under those circumstances to protect ratepayers
3 who inherit an abandoned nuclear plant where the prime
4 contractor has walked away from the job? What would you
5 do then?

6 **A** I can't speculate, because there are too many different
7 variables, depending on how far along you are in
8 construction, how much you have left to spend. We'd
9 have to look at the situation when we got there and
10 figure out what we were going to do. The company has
11 taken steps to escrow the documentation so that they
12 would have documents that they needed to complete the
13 project. I couldn't speculate.

14 **Q** You heard Mr. Byrne's testimony on the subject?

15 **A** Yes, sir, I did.

16 **Q** And have you, with ORS, even discussed the matter with
17 the SCE&G management about how they would take
18 responsibility, should Toshiba/Westinghouse default?

19 **A** We have discussed options about escrowing and how they
20 would move forward after escrowing. I don't think that
21 they have a firm answer for that, either. It would
22 depend on where they were in the project, you know,
23 whether it was just Toshiba or what all the situations
24 were surrounding that situation.

25 **Q** So, aside from how SCE&G would respond – and all we know

1 is what Mr. Byrne shared with us, that they had at least
2 contemplated it – how would ORS see to it that
3 ratepayers were protected in the event that Westinghouse
4 defaulted or Toshiba defaulted, and somebody else had to
5 take responsibility for this plant?

6 **A** I think that escrowing the information is critical. I
7 also think that the work that SCE&G is doing right now
8 at the Dispute Resolution Board, in negotiating that
9 milestone payment schedule, is critical. We want to be
10 sure that Westinghouse has only been paid for work that
11 they've done; that we're not just making time-based
12 payments, that we're making work-based payments, so that
13 there will be budgeted money left at the end to help us
14 to finish the project.

15 **Q** All right, but – that's good, but my question really is
16 what happens or how would ORS protect ratepayers in the
17 event that SCE&G is left holding the bag?

18 **MR. NELSON:** Objection. That's asked and
19 answered. She just answered that question. I
20 think Mr. Guild has just asked the exact same
21 question once again. We've kind of been through a
22 couple of cycles of this. I think it's been
23 answered.

24 **MR. GUILD:** I beg your pardon. We can read
25 back the transcript, but she answered a different

1 question from what I asked. She talked about
2 resolving another dispute before the Dispute
3 Resolution Board. I want to know what ORS
4 contemplates doing to protect ratepayers in the
5 event that the fixed-price option is defaulted
6 upon, and SCE&G or someone else has to take
7 responsibility for the plant. What happens to
8 ratepayers? Has ORS even thought about that?

9 **CHAIRMAN WHITFIELD:** I think you've asked her
10 that question, Mr. Guild, and I think she's
11 answered it. Now, if you want to ask a different
12 question, or rephrase it maybe different, or ask it
13 a different –

14 **MR. GUILD:** I'll try, Mr. Chairman.

15 **CHAIRMAN WHITFIELD:** – ask a slightly
16 different question, but that question you've asked
17 and she has given an answer.

18 **MR. GUILD:** All right.

19 **BY MR. GUILD:**

20 **Q** I understand your testimony, Ms. Powell, that there is
21 something you interpret and characterize as a guarantee
22 in the settlement, and I would respectfully disagree.
23 But in the event that I have hypothesized – which,
24 frankly, does not seem far-fetched at all, given your
25 own witness's testimony – that Westinghouse/Toshiba

1 default, they cannot honor this contract, how much money
2 would South Carolina ratepayers of SCE&G, maybe even
3 co-op customers who buy their power from Santee Cooper,
4 how much financial impact would such an event have on
5 us, on my clients? What does ORS know of that, if
6 anything?

7 **A** It would just depend on where the project was, what
8 SCE&G had to do to fix the situation. It's difficult to
9 speculate on something when – is it Toshiba? Is it, you
10 know, other subcontractors? What's going on, without
11 any specific details, it's difficult to say that. I can
12 say that ORS is concerned, as always, with the public,
13 and we would do what we always do, which is evaluate the
14 options, evaluate the costs, and determine, you know,
15 what has been prudently incurred and what hasn't.

16 **Q** Have you made any estimate of what the financial impact
17 would be on ratepayers, in a hypothetical eventuality
18 that the contract is defaulted on?

19 **A** No, because there are too many variables to calculate
20 that?

21 **Q** Nonetheless, you treat this as a guarantee and entered
22 into the settlement, challenging not a dime of these
23 cost overruns. That's the ORS position, is that you –

24 **A** That the –

25 **Q** – entered a settlement – excuse me – you've entered a

1 settlement, you characterize it as good for ratepayers,
2 you've called it a guarantee, and you have no idea what
3 the financial impacts would be if there's a default on
4 this contract.

5 **A** The guarantee is under the terms of the EPC contract.
6 We've had meetings with Westinghouse where senior
7 Westinghouse management assured us that they were
8 committed to finishing this project. We've discussed
9 the issue with SCE&G; they have assured us that
10 Westinghouse has told them they're committed to
11 finishing the project, that it's very important to their
12 brand. I can't speculate on hypothetical situations
13 until we see what they are. And I think that Gary's
14 testimony talks about potential costs that Westinghouse
15 would have to bear – not necessarily that Westinghouse
16 would walk away; it's just that Westinghouse should have
17 to absorb those costs.

18 **Q** Has the ORS made an assessment of the financial health
19 of Toshiba/Westinghouse and their ability to absorb
20 \$800-\$900 million in excess costs for this project?

21 **A** We've followed what is in the news articles about the
22 health of Toshiba and Westinghouse. We're not privy to
23 their private balance sheets.

24 **Q** Have you asked them to provide you information about
25 their financial *bona fides*, their ability to absorb that

1 cost?

2 **A** As part of the EPC contract agreement, they do have a
3 guarantee that would be available, you know, during any
4 litigation.

5 **Q** That's not my question, though, Ms. Powell. My question
6 is, has ORS asked Toshiba/Westinghouse to provide any
7 verification of its financial capacity to absorb
8 \$800-\$900 million of losses – the very amount of losses
9 that your own witness says he's concerned about? Have
10 you evaluated their ability to bear those losses?

11 **A** As I mentioned before, we have looked at the publicly
12 available information. We haven't gone beyond the
13 publicly available information in that particular case.
14 We have had discussions with Westinghouse and with SCE&G
15 about their level of commitment to the project and
16 whether they think they can finish the project.

17 **Q** Did they tell you everything is great?

18 **A** They said that they are committed – Westinghouse said
19 they were committed to the project and they were
20 committed to finishing the project.

21 **Q** And did they say they were committed to the project
22 three years ago? Everything was great, back then?

23 **A** I – Westinghouse is still here, and CB&I isn't.

24 **MR. GUILD:** Well, that's all the questions I
25 have. Thank you.

1 **MS. WRIGHT:** You asked my questions. I don't
2 have any.

3 **CHAIRMAN WHITFIELD:** Thank you, Mr. Guild.

4 Ms. Thompson, I'm sorry I skipped over you.
5 Do you have any questions for this witness?

6 **MS. THOMPSON:** No, thank you, Mr. Chairman.

7 **CHAIRMAN WHITFIELD:** Ms. Wright?

8 **MS. WRIGHT:** No, he asked every one I had.

9 **CHAIRMAN WHITFIELD:** Okay.

10 Commissioners? Commissioner Elam.

11 **EXAMINATION**

12 **BY COMMISSIONER ELAM:**

13 **Q** It's almost good evening. On page five of your
14 settlement-and-direct testimony, please explain how ORS
15 will monitor the scopes of work covered by the fixed-
16 price option, so that no future increases will be
17 granted on those items. How are you going to do that
18 monitoring?

19 **A** Sure. So, basically, what the option does is it fixes
20 the price for the remaining work under the EPC contract;
21 it has very specific exceptions that were spelled out.
22 It's not so much a matter of monitoring whether
23 something is in the scope as monitoring whether
24 something is an exception to the scope, or not. I think
25 that that is what we really have to do.

1 We get invoices and our Audit Department reviews
2 those invoices. The invoices are, you know, associated
3 with – from Westinghouse, and we would look and see, you
4 know, is that invoice a milestone payment? Is that
5 invoice related to the sales tax, performance bond, and
6 insurance payments, something that's not inside of the
7 scope of work?

8 **Q** Are they coded some way, or do you just have to make a
9 judgment about whether something is in the scope or not?

10 **A** I'm not familiar with the details of the invoices,
11 because Audit really usually works with that. I do know
12 that there is coding on the invoices. And in the past,
13 we had asked SCE&G to help us to, you know, flag
14 invoices related to certain issues or certain items.
15 And when they get the new milestone payment schedule
16 negotiated, I feel like that's probably how we would
17 probably handle it, going forward, as well.

18 **Q** Is this monitoring any different than what you have done
19 in the past?

20 **A** No. There have always been scopes of work that were
21 fixed, scopes of work that were time-and-material,
22 scopes of work that were, you know, under other
23 different cost structures. It's actually much simpler
24 than past, because it's all fixed except for a very
25 small amount that's not fixed.

1 **Q** Okay, thank you.

2 **A** You're welcome.

3 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
4 Elam.

5 Other Commissioners?

6 [No response]

7 Well, if no further Commissioner questions,
8 Mr. Nelson, any redirect?

9 **MR. NELSON:** No redirect, Mr. Chairman.

10 I'd ask that Ms. Powell please be excused from
11 the rest of the hearing, if everybody is done with
12 her. She has an appointment tomorrow she has to be at.

13 **CHAIRMAN WHITFIELD:** Yes, we realize she has a
14 schedule conflict tomorrow.

15 And if no one has any further questions, Ms.
16 Powell, you may step down and you are excused for
17 tomorrow.

18 And at this time, we're going to recess the
19 hearing until in the morning, and we will start
20 back at 10:30 in the morning.

21 [WHEREUPON, the witness was excused.]

22 [WHEREUPON, at 6:00 p.m., the hearing in the
23 above-entitled matter was adjourned, to
24 reconvene at 10:30 a.m. on October 13, 2016.]

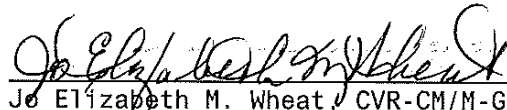
25

C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of proceedings had and testimony adduced in a hearing held in the above-captioned matter before the PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA;

That the witnesses appearing during said hearing were affirmed by me to state the truth, the whole truth, and nothing but the truth;

IN WITNESS WHEREOF, I have hereunto set my hand and seal, on this the 21st day of October, 2016.


Jo Elizabeth M. Wheat, CVR-CM/M-GNSC
Hearings Reporter, PSC/SC
My Commission Expires: January 27, 2021.